

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

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7 JUAN CARLOS LEMUS,
8 Plaintiff, No. C 11-1099 PJH (PR)
9 vs. ORDER DISMISSING
10 CORRECTIONAL TRAINING FACILITY AMENDED COMPLAINT
EMPLOYEES; DR. E. SULLIVAN, DR. J.
11 LEE, RN A. COLEMAN, CMO D.
JACOBSEN, B. DIXON, JANE DOES
12 AND JOHN DOES (1-20), and
DIRECTOR M. CATE (CDCR),
13 Defendants.
14 _____ /
15 Plaintiff, an inmate at the Correctional Training Facility, has filed a pro se civil rights
16 complaint under 42 U.S.C. § 1983. The original complaint was dismissed with leave to
17 amend and plaintiff has filed an amended complaint.

18 **DISCUSSION**

19 **A. Standard of Review**

20 Federal courts must engage in a preliminary screening of cases in which prisoners
21 seek redress from a governmental entity or officer or employee of a governmental entity.
22 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and
23 dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may
24 be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at
25 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police*
26 *Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

27 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of
28 the claim showing that the pleader is entitled to relief." "Specific facts are not necessary;

1 the statement need only "give the defendant fair notice of what the . . . claim is and the
2 grounds upon which it rests." "*Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations
3 omitted). Although in order to state a claim a complaint "does not need detailed factual
4 allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief'
5 requires more than labels and conclusions, and a formulaic recitation of the elements of a
6 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief
7 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
8 (citations omitted). A complaint must proffer "enough facts to state a claim to relief that is
9 plausible on its face." *Id.* at 570. The United States Supreme Court has recently explained
10 the "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the
11 framework of a complaint, they must be supported by factual allegations. When there are
12 well-pleaded factual allegations, a court should assume their veracity and then determine
13 whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 129 S.Ct.
14 1937, 1950 (2009).

15 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
16 elements: (1) that a right secured by the Constitution or laws of the United States was
17 violated, and (2) that the alleged deprivation was committed by a person acting under the
18 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

19 **B. Legal Claims**

20 In the original complaint, plaintiff asserted that he suffered from Coccidioidomycosis,
21 apparently the disease that is commonly called "Valley Fever." He stated that he had not
22 received proper medical care for it, but his allegations were conclusory and were against
23 "defendants," rather than specific named defendants. For instance, he stated that "From
24 September 2009 to March 2010, defendants have repeated denied, delayed, medical tests
25 and providing medical treatment for plaintiff's Coccidioidomycosis [and] failed to provide plaintiff
26 with necessary and pain and infections medications" Plaintiff was informed that this
27 was insufficient to meet the *Iqbal* standard. He must provide more specific factual
28 allegations as to what each individual defendant actually did, identified as closely as

1 possible by time and location, sufficient to make it plausible that he has a claim for relief
2 against each defendant.

3 Unfortunately, the amended complaint has failed to cure the deficiencies noted in the
4 court's screening order. While plaintiff has identified some specific defendants his
5 allegations regarding the improper medical treatment remain far too general. Plaintiff
6 contends that a doctor and nurse have denied him proper medical care and have not
7 provided the appropriate medication. Plaintiff has again failed to specifically describe the
8 medical care being denied or even the type of medication and why it was required. Simply
9 saying that defendants failed to properly treat Valley Fever is insufficient. Plaintiff must
10 describe the treatment that was denied, what was required and why the defendants' denial
11 of the treatment demonstrated deliberate indifference to his serious medical needs.

12 Medical claims like the one presented by plaintiff are actionable under section 1983
13 only if plaintiff is able to allege facts plausibly asserting that he was the victim of deliberate
14 indifference to a serious medical need, a violation of the Eighth Amendment's proscription
15 against cruel and unusual punishment. See *Estelle v. Gamble*, 429 U.S. 97, 104 (1976);
16 *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds, *WMX*
17 *Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc). The amended
18 complaint is dismissed and plaintiff will allowed one final opportunity to file an amendment
19 to demonstrate a constitutional deprivation.

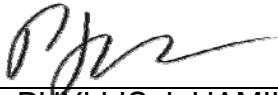
CONCLUSION

21 1. The amended complaint is **DISMISSED** with leave to amend in accordance with
22 the standards set forth above. The second amended complaint must be filed no later than
23 **February 22, 2013**, and must include the caption and civil case number used in this order
24 and the words SECOND AMENDED COMPLAINT on the first page. Because an amended
25 complaint completely replaces the original complaint, plaintiff must include in it all the
26 claims he wishes to present. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992).
27 He may not incorporate material from the original complaint by reference. Failure to amend
28 within the designated time will result in the dismissal of these claims.

1 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the
2 court informed of any change of address by filing a separate paper with the clerk headed
3 "Notice of Change of Address," and must comply with the court's orders in a timely fashion.
4 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to
5 Federal Rule of Civil Procedure 41(b).

6 **IT IS SO ORDERED.**

7 Dated: January 23, 2013.


8 PHYLLIS J. HAMILTON
9 United States District Judge

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